

**NOTICE AND AGENDA
TOWN COUNCIL WATER DISTRICT
SPECIAL MEETING**

Public Notice is given that the Apple Valley Town Council, Apple Valley, Washington County, Utah will hold a **SPECIAL Town Council Water Meeting on Wednesday, April 24, 2019** at the **Apple Valley Town Hall**, 1777 N. Meadowlark Dr., Apple Valley, Utah, commencing at **5:00 PM** or immediately following the scheduled SPECIAL Big Plains Water Meeting. In accordance with state statute, one or more council members may be connected via speakerphone.

Call to Order/Pledge of Allegiance/Roll Call

DISCUSSION AND ACTION

A. BPW Development Agreement; Gooseberry Preserve

Adjournment

CERTIFICATE OF POSTING I, Michelle Kinney, as duly appointed Recorder for the Town of Apple Valley, hereby certify that copies of the notice of meeting and agenda were posted at the Apple Valley Town Hall, the Utah Public Meeting Notice website <http://pmn.utah.gov> the Town website www.applevalleyut.gov.

Dated the 23rd day of April, 2019
Michelle Kinney, Recorder
Town of Apple Valley

THE PUBLIC IS INVITED TO ATTEND ALL SSD BOARD MEETINGS

In compliance with the American with Disabilities Act, individuals needing special accommodations (including auxiliary communicative aids and services) during this meeting should notify the town at 435-877-1190.

Item Attachment Documents:

A. BPW Development Agreement Gooseberry Preserve

Upon recording, return to:

Big Plains Water and Sewer Special Service District

Attn: Town Clerk

1777 N. Meadowlark Dr.

Apple Valley, UT 84737

Tax ID # _____

WATER SERVICE AGREEMENT BETWEEN THE BIG PLAINS WATER AND SEWER DISTRICT AND GOOSEBERRY PRESERVE, L.L.C.

THIS WATER SERVICE AGREEMENT (“**Agreement**”) is made and entered into effective this ____ day of April, 2019, by and between BIG PLAINS WATER AND SEWER SPECIAL SERVICE DISTRICT (“**Water District**”), and GOOSEBERRY PRESERVE, L.L.C., a Utah limited liability Water District (“**Developer**”). Water District and Developer may also be referred to individually as a “**Party**” and collectively as the “**Parties**.”

RECITALS

A. Water District is organized as a special service district under the laws of the State of Utah and is authorized to provide water and sewer service to residential and commercial properties located in Washington County, Utah.

B. Developer is developing a real estate project in Apple Valley Town, a municipality of the State of Utah (the “**Town**”) commonly known as the “Gooseberry Preserve Landscape Hotel,” a planned commercial development project which may contain up to, but not more than, 120 residential units on approximately 70 acres of land owned by Developer (the “**Project**”). The land on which the Project will be developed and constructed is more particularly described in EXHIBIT “A” attached hereto and incorporated by reference herein (the “**Project Property**”).

C. Developer has requested that Water District provide water service for the Project. The Parties acknowledge that the Project is new construction and there is not currently water service at the Project.

D. Water District is willing to provide water service for the Project in conformance with and subject to the provisions of this Agreement and the rules and regulations of the Water District.

E. This Agreement contains various general requirements and conditions for the design and construction of water system facilities to be developed in connection with the Project, including certain procedures governing the Water District's review, approval, inspection and acceptance of said system as a condition to the Water District providing water service to the Project.

AGREEMENT

NOW, THEREFORE, in consideration of the mutual covenants contained herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

1. PROJECT WATER SYSTEM IMPROVEMENTS

(a) Project Water System. The "**Project Water System**" shall include all culinary water transmission lines extending from the prescribed point of connection with the Water District's existing water system which are necessary in providing water service to the Project, all internal water main lines and individual service lines within the Project, all on-site water storage facilities and storage tanks, all water meters and meter boxes, all necessary valves and valve boxes, all required pumps and pump stations, all pressure regulation systems, all culinary water system manholes, and all other pipes, fittings, equipment and facilities necessary to enable the Water District to provide culinary water service to and within the Project. The Project Water System will be designed and constructed in accordance with the standards and policies of the Water District. Final acceptance of the infrastructure and improvements comprising the Project Water System will be accomplished through inspections and testing conducted by the Water District. Attached hereto as Exhibit "A" is an initial concept plan showing the general location of the Project Water System that Developer is responsible to construct.

(b) Offsite Improvements and Water System Extensions. Developer will construct at its own cost and expense the offsite water storage tank and the pipeline from the storage tank to the existing system. The Water District, at its cost and expense, shall be responsible for installing all other offsite improvements, water delivery lines, water system extensions, and equipment necessary to deliver water to the boundaries of the Project that is not shown on the Project Construction Plans (Final Plans).

(c) Design of Project Systems. The Project Water System shall be designed, constructed, and installed in conformance with the requirements of this Agreement, the Water District's design standards, construction specifications, and applicable laws. The Project Water System shall be designed, constructed, and installed by Developer at its sole cost and expense.

(d) Representation of Ownership of Project Property; Dedication and Easements. Developer represents that:

(1) Developer is (or will be prior development of the Project) the fee title owner of the Project Property for which services are being requested of Water District.

(2) The Project Water System required for the Project shall be installed in locations reasonably acceptable to the Water District within public easements and/or rights-of-way which have been granted or shall be granted to Water District and/or the Town of Apple Valley. For any portion of the Project Water System to be installed on property that is not part of the Project Property, and not part of existing public streets or public utility easements which are available to Developer, Developer shall acquire and grant easements to Water District and/or the Town of Apple Valley ~~(or cause such easements to be granted to the Water District)~~, at no cost to Water District and/or Town of Apple Valley, prior to the commencement of construction. All grants of easement or right of way shall be in a form reasonably acceptable to Water District and/or the Town of Apple Valley.

2. WATER DISTRICT OBLIGATIONS AND COMMITMENTS.

(a) So long as Developer constructs and completes the Project Water System to the reasonable satisfaction of the Water District in compliance with this Agreement and the Water District's standards and policies, the Water District shall install the offsite improvements described in Section 1(b) above and provide culinary water service to the Project and to all residential units constructed within the Project in exchange for the following:

(1) Payment from Developer to the Water District of Sixty Thousand Dollars (\$60,000.00) (the "**Initial Payment**"), which Initial Payment shall be made within ten (10) days following the full execution of this Agreement and represents full payment for water impact fees for the 120 units.

(2) Payment from Developer to the Water District of an additional Ninety Thousand Dollars (\$90,000.00) (the "**Construction Completion Payment**") within ten (10) days following the Water District's issuance of a Notice of Final Construction Approval of the Project Water System (in accordance with the provisions in Section 5 below). Failure to timely pay the Construction Completion Payment shall result in the revocation of Developer's right to receive water services.

(3) As the Water District provides water service to the Project and the residential units therein, standard water service fees will be paid to the Water District consistent with the water service fee schedule applicable to all water service recipients of water service within the Water District's boundaries as may be adopted or amended by the Water District from time to time.

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(4) The Developer will transfer, by Warranty Deed, Water Rights [identified as 81-2171 and 81-4614](#). The total quantity of water rights transfer must equal to twenty-five acre-feet net of any deductions required by the State Engineer.

(5) The Developer will, as part of the Project Water System, build one or more commercial metering stations at a location designated on the Final Plans.

(6) The Developer will pay the costs of District reviews, inspections, testing, and other such normal District services that will be rendered by the District as part of the development. Many of the District services contemplated by this item (6) are identified in Article 5 CONSTRUCTION OF THE WATER SYSTEM, below.

(7) Any changes initiated by the Developer that increase the cost of District services shall be paid by the Developer.

(b) Beyond the Water Rights stipulated in (4) above, the Water District holds sufficient water rights and water shares to provide water service to the Project. The Water District will not require Developer to deliver, provide, or pay for any additional water rights or water shares in order to receive water service under this Agreement.

3. WILL SERVE

Following execution of this Agreement and receipt of the Initial Payment, the Water District will provide Developer with a “will serve” letter, indicating the Water District’s commitment to provide water service to the Project, subject to the terms and conditions of this Agreement.

4. FINAL PLANS

Following the execution of this Agreement and receipt of any approvals required by the Town, Developer shall submit to the Water District a final set of construction drawings, plans and profiles (the “**Final Plans**”) for the Project Water System, in conformance with the following:

(a) The Final Plans shall comply with Water District’s design standards and construction specifications.

(b) The Final Plans submittal shall be reviewed internally by Water District. Developer shall cooperate with Water District in revising and conforming the Final Plans to the requirements of Water District. The Water District shall not unreasonably withhold or delay its approval of the Final Plans.

(c) The Final Plans must be approved in writing by Water District and any fees or payments required by the District or under this Agreement have been paid by Developer before any construction or installation of the Project Water System may be commenced by Developer or its contractors.

5. CONSTRUCTION OF PROJECT WATER SYSTEM

(a) Pre-construction Meeting. After receiving approval by Water District of the Final Plans and prior to the commencement of construction of the Project Water System, Developer and its contractors shall be required to attend a pre-construction meeting, as scheduled by Water District, to be attended by Developer and its contractors, Water District personnel and its consulting engineer, and others as determined by Water District or Developer (including a Town representative), for the purpose of reviewing the terms and provisions of this Agreement and the applicable provisions of Water District's rules and regulations, coordinating construction, and responding to questions. Developer shall deliver to the Water District, a set of electronic drawings to the Water District in both .dwg and .pdf formats for the Project at the pre-construction meeting.

(b) Governmental Agency Permits. Prior to commencement of construction of the Project Water System, Developer shall, at its sole cost and expense, secure, or cause to be secured, any and all permits which may be required by any other governmental agency having jurisdiction over the work.

(c) Notice to Proceed with Construction. At such time as: (i) Developer has paid the fees as required herein, (ii) Developer has obtained all necessary easements and rights of way necessary to construction of the improvements, (iii) Water District has approved and executed the Final Plans, (iv) Developer has delivered the CD containing the CAD file for the Project, (v) Developer has obtained all required governmental agency permits, (vi) Developer shall secure liability insurance in the amount of three million dollars (\$3,000,000.00) and property insurance in the amount five hundred thousand dollars (\$500,000.00) and has delivered proof of insurance suitable to the Water District and naming the Water District as an "additional insured", ~~if required,~~ and (vii) Developer has posted an improvement assurance for the Project Water System, then the Water District shall issue a "**Notice to Proceed with Construction**."

(d) Construction.

(1) Developer shall be required to furnish all materials and equipment as shall be necessary for the construction and installation of the Project Water System.

(2) The Project Water System shall be constructed and installed by Developer, at Developer's sole cost and expense, in accordance with Water District's Design Standards,

Construction Specifications and Standard Drawings, or otherwise as approved by Water District in writing.

(3) Developer agrees that all work performed in connection with the construction and installation of the Project Water System shall be of high quality and be performed in a safe, workmanlike manner.

(4) Developer shall comply with all applicable federal, state and local laws, statutes, ordinances, rules and regulations pertaining to Developer's activities relating to the design, construction and installation of the Project Water System, and any portion thereof.

(5) Water District officials and its engineers shall have the reasonable right of access to the Project and any portion thereof during the period of construction to inspect and observe the Project Water System and construction thereof, and any work thereon, and for all other purposes necessarily incident to this Agreement

(6) Water District representatives will comply with Developer's standard safety rules while on the Project site.

(f) Periodic Inspection, Testing and Approvals.

(1) Water District and its engineers may perform periodic inspections and testing of the Project Water System while the same is being installed by Developer or its contractors.

(2) No work on the Project Water System requiring any excavation shall be covered over unless and until the same has been inspected and approved by the Water District's representatives or other governmental entities having jurisdiction over the particular work involved. If any excavation is backfilled prior to inspection, Developer, upon request from Water District or other governmental entity having jurisdiction over the work, shall be obligated to re-open the trench for inspection and the same shall not be re-covered until the appropriate inspections have been performed and all required approvals have been received.

(3) Water District shall conduct such tests as it shall deem necessary which tests shall be at Developer's sole cost and expense.

(4) Developer shall promptly repair and/or replace any work and /or materials found by Water District during the course of its inspections to be defective or which is otherwise not in conformity with Water District's design standards and specifications, as required by Water District consistent with the Final Plan approved by Water District, all at Developer's sole cost and expense.

(5) Developer shall promptly correct and/or redo any work that fails to conform to the requirements of Water District's construction standards and specifications, and shall remedy

any defects due to faulty materials, equipment, or workmanship, as required by Water District, at Developer's sole cost and expense.

(g) Maintenance and Up-keep During Construction. During construction of the Project System, Developer shall keep, or shall cause its representatives, agents and contractors, to keep the Project and all affected public streets free and clear from any unreasonable accumulation of debris, waste materials, and any nuisances arising from the construction of the Project Water System and shall contain construction debris and implement reasonable dust control measures so as to minimize scattering via wind and water.

(h) Completion of Construction; Final Construction Approval; Warranty Bond.

(1) After completion of construction of the Project Water System, or any portion thereof, Water District shall perform an inspection ("**Final Completion Inspection**"). Developer shall cooperate with Water District in completing any punch-listed items identified during the Final Completion Inspection as a condition to Water District's approval thereof.

(2) The actual interconnection of the Project Systems with the Water District's overall water system shall be done by Developer under the direct supervision of Water District.

(3) At such time as Developer has fully completed and Water District has finally approved the punch-listed items identified in the Final Completion Inspection, and the Project Water System has been interconnected to the Water District Water System, to Water District's satisfaction, Water District shall issue its final approval on all construction ("**Notice of Final Construction Approval**").

(4) Subsequent to the issuance of the Notice of Final Construction Approval, Developer will prepare or cause to be prepared, a minimum of four sets of final "as-built" drawings for the Project Water System, at Developer's sole cost and expense. Developer shall provide Water District with two sets of as-built drawings, one set for Water District to retain, and one set to the Utah Division of Drinking Water. In addition, Developer shall submit another set of electronic as-built drawings to the Water District in both .dwg and .pdf formats.

(5) Developer shall, prior to acceptance by the District of the Project Water System, provide a one-year improvement warranty bond in the amount of 10% of the total amount of the cost of the Project Water System. All unused portions of the warranty bond will be released to Developer following the one-year warranty period.

6. **FINAL ACCEPTANCE OF THE PROJECT.** The Water District shall issue its notice of final acceptance of the Project Water System ("**Notice of Final Acceptance**"), promptly upon satisfaction of the following:

(a) The issuance of a Notice of Final Construction Approval;

(b) Receipt by the Construction Completion Payment from Developer; and

(c) Receipt of appropriate lien releases for the Project Water System.

7. TITLE TRANSFER; OPERATION AND MAINTENANCE; SERVICE

(a) Transfer of Title to Project Systems to the Water District. The Notice of Final Acceptance, upon issuance, shall be a written acknowledgment by the Parties that all of Developer's right, title, estate and interest in and to the Project Water System is deemed transferred by Developer to Water District and that Water District accepts and assumes the perpetual obligation of operation, maintenance, repair and replacement of the Project Water System up to the water meters. ~~The Water District shall be responsible for maintenance of the Project Water System up to the water meter,~~ beyond which the Developer assumes all responsibility for maintenance and repair of the system.

(b) Service Connections. The Developer will not install any service connections to the Project Water System before Water District issues the Notice of Final Acceptance

8. OBLIGATION TO PROVIDE WATER SERVICE. Upon compliance with all of the terms and conditions set forth in this Agreement, the Water District agrees to provide water service to the Project and all residential units constructed therein subject to the statutes, rules, and regulations governing the Water District.

9. INDEMNIFICATION; INSURANCE. Developer ~~hereby agrees to~~ shall secure all-risk liability insurance in the amount of three million dollars (\$3,000,000.00) which shall also include automobile liability insurance in an amount not less than one million dollars (\$1,000,000.00) and property insurance in the amount five hundred thousand (\$500,000.00) and shall delivered proof of insurance suitable to the Water District and naming the Water District as an "additional insured", and shall indemnify and hold Water District harmless from and against any and all liability, loss, damage, costs, or expenses, including reasonable attorney's fees and court costs, arising from or as a result of the death of any person or any accident, injury, loss, or damage whatsoever caused to any person or to the property of any person as a result of construction activities by Developer, its agents, employees or contractors, and any claim by any contractor or other person for any amounts due and owing by Developer to said contractor or person. Developer shall not be responsible for, and this indemnity shall not apply to (i) any negligent acts or omissions of Water District, or of its agents, employees or contractors, or (ii) any liability, loss, damage, costs or expenses, including attorney's fees and court costs, arising in connection with any work performed by third-parties, such as public or private utility companies, that are not under the control of Developer. At the end of the Warranty Period provided for herein, and Water District's final approval and acceptance of the Project Water System, the indemnity obligations of Developer set forth herein shall cease to apply with respect to any work or activity performed by the Developer, its agents, employees or contractors on or after that date. Water District is a governmental entity under the Utah Governmental Immunity Act 63G-7-102 et seq., and as such retains all of its rights, privileges, and immunities under the Act. Nothing in this Agreement shall be construed as a waiver of any such right or immunity.

10. DEFAULT. In the event Developer fails to perform its obligations hereunder or comply with the terms and provisions hereof, and such failure remains uncured for a period of thirty (30) days (“**Cure Period**”), after receiving written notice of default from the Water District, and provided that (i) such default cannot reasonably be cured within the Cure Period, and (ii) Developer shall have commenced to cure such default within such Cure Period and thereafter uses reasonable efforts to cure the same, then the Cure Period shall be extended for so long as shall be required for Developer to exercise reasonable efforts to cure the default. If, however, the default remains uncured for a period of one hundred eighty (180) days in the aggregate, then Water District may, at its election, pursue any of the following remedies available at law or in equity including injunctive relief, specific performance, or termination of the Agreement.

11. ASSIGNABILITY. With the written approval of Water District (which approval shall not be unreasonably withheld), Developer may assign its rights and delegate its duties hereunder to a third-party purchaser of all or a portion of the Project, subject to the terms and provisions of this Agreement. In the event of an assignment, the assignee shall be jointly and severally liable with Developer for the performance of each and every obligation of Developer contained in this Agreement, unless, prior to the assignment, a written agreement satisfactory to Water District, delineating and allocating between Developer and the assignee the various rights and obligations of Developer hereunder has been approved by Water District. Prior to any assignment, Developer shall obtain and deliver to the Water District a written statement executed by the assignee, duly acknowledged by a notary public, wherein the assignee acknowledges that it has reviewed and is familiar with the terms and provisions of this Agreement and agrees to be bound hereby.

12. MISCELLANEOUS PROVISIONS

(a) Notice. All notices required or desired to be given hereunder shall be in writing and shall be deemed to have been given on the date of personal service upon the Party for whom intended, or if mailed, by certified mail, return receipt requested, postage prepaid, and addressed to the Parties at the following addresses:

TO WATER DISTRICT:

Big Plains Water and Sewer District
Attn: Chair
1777 N. Meadowlark Dr.
Apple Valley, UT 84737

TO DEVELOPER:

Gooseberry Preserve, LLC
Attn: Rich Despain

[2419 East Summerfield Lane](#)
[Sandy, 84092](#)
Email: rich@despainconstruction.com

With a copy to:
Paxton Guymon
6405 South 3000 East #150
Salt Lake City, Utah 84121
Email: paxton@yorkhowell.com

Any Party may change its address for notice hereunder by giving written notice to the other Party in accordance with the provisions of this Section.

(a) Further Assurances. Each of the Parties shall execute and deliver any and all additional papers, documents, and other assurances, and shall do any and all acts and things reasonably necessary in connection with the performance of their obligations hereunder and to carry out the intent of the Parties.

(c) Attorney's Fees; Venue. The Parties each agree that should they default in any of the covenants or agreements contained herein, the defaulting Party shall pay all costs and expenses, including reasonable attorney's fees and court costs, which may arise or accrue from the enforcement of this Agreement, or in pursuing any remedy provided for hereunder or by the statutes, or other laws of the State of Utah, whether such remedy is pursued by filing suit or otherwise, and whether such costs and expenses are incurred with or without suit or before or after judgment. The venue for any suit or action arising out of this Agreement shall be the Fifth Judicial District Court of the State of Utah and for any federal suit or action, the United States District Court for the District of Utah.

(d) Entire Agreement. This Agreement, together with the Exhibits attached hereto, and the documents referenced herein, contain the entire agreement by and between the Parties with respect to the subject matter hereof, and supersede any prior promises, representations, warranties, inducements or understanding between the Parties which are not contained herein.

(e) Binding Effect; Covenants Run with the Land. This Agreement shall be binding upon and inure to the benefit of the Parties hereto and upon their respective officers, agents, employees, representatives, affiliates, successors-in-interest, and assigns, including, without limitation, any separate affiliated entity of Developer which is involved with, assumes or undertakes to fulfill any responsibility or obligation imposed upon Developer pursuant to this Agreement, and any city or other governmental agency or agencies that assumes jurisdiction over the Project should Water District no longer have jurisdiction over the Project. The covenants contained herein shall be deemed to run with the property within the Project and shall be binding upon and inure to the benefit of future owners of the Project and the lots therein.

(f) Recordation. Developer understands and agrees that Water District may record this Agreement, or a summary or notice thereof, in the Washington County Recorder's Office, for the purpose of providing notice to all subsequent purchasers or interest holders of properties affected by this Agreement.

(g) No Waiver. Any Party's failure to enforce any of the provisions of this Agreement shall not constitute a waiver of the right to enforce such provision. The provisions may be waived only in writing by the Party intended to be benefitted by the provision, and a waiver by a Party of a breach hereunder by the other Party shall not be construed as a waiver of any succeeding breach of the same or other provision.

(h) No Relationship. Nothing in this Agreement shall be construed to create any partnership, joint venture, or other fiduciary relationship between the Parties.

(i) Amendment. This Agreement may be amended only in writing executed by Water District and Developer.

(j) Warranty of Authority. The individuals executing this Agreement on behalf of the Parties hereby warrant that they have the requisite authority to execute this Agreement on behalf of the respective Parties and that the respective Parties have agreed to be and are bound hereby.

IN WITNESS WHEREOF, the Parties have executed this Agreement by and through their respective, duly authorized representatives as of the day and year first above written.

WATER DISTRICT

(Big Plains Water and Sewer Special Service District)

By: _____
Its: _____

DEVELOPER

(Gooseberry Preserve, LLC)

By: _____
Its: _____

[Notary Acknowledgments Follow on the Next Pages]

ACKNOWLEDGMENTS

STATE OF UTAH)
 : ss.
County of _____)

On the _____ day of _____, 2018, personally appeared before me _____, in his/her capacity as _____ of Big Plains Water and Sewer Special Service District, and executed this Agreement on behalf of said entity.

NOTARY PUBLIC

STATE OF UTAH)
 : ss.
County of _____)

On the _____ day of _____, 2018, personally appeared before me _____, in his/her capacity as _____ of Gooseberry Preserve, LLC, and executed this Agreement on behalf of said entity.

NOTARY PUBLIC

EXHIBIT “A”

Concept Plan of Project Water System

Attached.